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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92053066
Party	Defendant Yulong Computer Telecommunication; Scientific (Shenzhen) Co., Ltd
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Date	06/24/2011
Attachments	FIRST AMENDED ANSWER COOLPAD F.pdf (12 pages)(180130 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re: Trademark Registration No.: 3527661

Mark: **COOLPAD 酷派**

Registration Date: November 04, 2008

Road Tools LLC)	Cancellation No.: 92053066
)	
Petitioner,)	
vs.)	REGISTRANT'S FIRST AMENDED
)	ANSWER TO PETITION TO
YULONG COMPUTER)	CANCEL REGISTRATION
TELECOMMUNICATION; SCIENTIFIC)	
(SHENZHEN) Co., LTD,)	
Registrant)	
)	

Registrant, YULONG COMPUTER TELECOMMUNICATION; SCIENTIFIC
(SHENZHEN) Co., LTD, a corporation organized and existing under the laws of the People's
Republic of China, with a principal place of business at 8 Floor, B Bldg, Hi-Tech Plaza, Tian'an
Cyber Park; Futian District, Shenzhen, (hereinafter "Registrant"), for its first amended answer to
the Petition To Cancel Registration of its trademark COOLPAD (stylized and design):

COOLPAD 酷派, published for Opposition on August 19, 2008, under application Serial No.
79/033536, and duly registered by the United States Patent & Trademark Office ("USPTO") on
November 04, 2008, hereby generally and specifically denies each and every allegation
contained in the Petition To Cancel Registration filed by Road Tools LLC, (hereafter Road Tools
LLC or "Petitioner") hereinafter not specifically admitted, modified, or qualified, and strict proof
is demanded thereof.

Registrant further responds as follows: Upon information and belief, Registrant
specifically denies that that Road Tools, LLC is an entity organized under the laws of New
Hampshire, with an address of 15 Frontier Street, Rye, New Hampshire, 03870. To the contrary,
Registrant is informed and believes:

(a) that no entity has ever been registered in the State of New Hampshire with the name of “Road Tools, LLC;”

(b) that the address of 15 Frontier Street, Rye, New Hampshire, 03870 is occupied by Elizabeth Conner, C.P.A.;

(c) that the ESTTA cover sheet accompanying the petition for cancellation identifies Petitioner as ROAD TOOLS INC. whereas the petition itself identifies petitioner as ROAD TOOLS LLC.

(d) that the entity known as “Road Tools LLC” a Domestic Limited Liability Company organized under the laws of the Commonwealth of Massachusetts, was involuntarily dissolved by Court Order and by the Massachusetts Secretary of the Commonwealth, Corporations Division on April 30, 2009, and was not reinstated until after the filing of the Petition for cancellation herein.

(e) that the petition for cancellation identifies Petitioner as an entity organized under the laws of New Hampshire in contrast to the record in pleaded Registration No. 2563728 which identifies it as a Massachusetts limited liability company.

(f) that the address for the owner of the pleaded registration incorrectly identifies the owner of the pleaded Registration No. 2563728 to located in the State of New Mexico.

1. Registrant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 1 of the Petition and therefore denies same. Registrant does however acknowledge that according to the USPTO’s online electronic Trademark Application and Registration Retrieval (TARR) system, the last “owner of record” of U.S. Trademark Registration No. 2563728 was listed as “Road Tools LLC” with an address of 15 Frontier Street, Rye, NM, (New Mexico) 03870, United States, whose legal entity status was listed as a Limited Liability Company Organized in “Massachusetts.” Registrant further acknowledges that U.S.

Trademark Registration No. 2563728 “the ‘728 registration”) was issued only in connection with the following goods: “computer stands specifically designed for holding a computer”.

2. Registrant admits only that the according to TARR, the ‘728 registration, appears to be a live registration subsisting on the Principal Register. Registrant is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 2 of the Petition and therefore denies same. Further, to the extent that the records of the ‘728 reflect incorrect statements, Registrant denies the validity thereof.

3. Registrant admits only that the according to the records of TARR, the USPTO “accepted and approved the combined Section 8 and 15 application.” Registrant is without information sufficient to form a belief as to the remaining allegations contained in paragraph 3 of the Petition and therefore denies same.

4. Registrant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 4 of the Petition and therefore denies same.

5. Registrant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 5 of the Petition and therefore denies same.

6. Registrant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 6 of the Petition and therefore denies same.

7. Registrant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 7 of the Petition and therefore denies same.

8. Registrant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8 of the Petition and therefore denies same.

9. Registrant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 9 of the Petition and therefore denies same.

10. Registrant is without knowledge or information sufficient to form a belief as to the

allegations contained in paragraph 10 of the Petition and therefore denies same.

11. Registrant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 11 of the Petition and therefore denies same.

12. Registrant admits the allegations contained in paragraph 12 of the Petition.

13. Registrant admits the allegations contained on page 3, in paragraph 13 of the Petition with respect to its application which matured into the '661 Registration. . Registrant is without information sufficient to form a belief as to the remaining allegations contained in paragraph 13 of the Petition and therefore denies same.

14. Registrant admits only that the Examining Trademark Attorney assigned to review the '536 application initially issued a provisional partial refusal Office action which applied only to specified goods in the U.S. application.

15. Registrant admits only that on July 9, 2008, Eastern Standard Time, Deying Guo, General Manager for Registrant filed a response with the USPTO amending the '536 application.

16. Registrant admits the allegations contained in paragraph 16 of the Petition.

17. Registrant denies the allegations contained in paragraph 17 of the Petition inasmuch as it has exhibited, shown and demonstrated its goods at trade shows and attended sales meetings in the United States since 2007, and has sought a distributor in connection with its goods in the USA.

18. Registrant admits the allegations contained in paragraph 18 of the Petition.

19. Registrant admits the allegations contained in paragraph 19 of the Petition.

20. Registrant denies the allegations contained in paragraph 20 of the Petition.

21. Registrant is without information sufficient to form a belief as to the allegations contained in paragraph 21 of the Petition and therefore denies same.

22. Registrant is without information sufficient to form a belief as to the allegations

contained in paragraph 22 of the Petition and therefore denies same.

23. To the extent that the Petition refers to “Apple,” Registrant is without information sufficient to form a belief as to the allegations contained in paragraph 23 of the Petition and therefore denies same.

24. Registrant is without information sufficient to form a belief as to the allegations contained paragraph 24 of the Petition and therefore denies same.

25. Registrant is without information sufficient to form a belief as to the allegations contained in paragraph 25 of the Petition and therefore denies same.

26. Registrant is without information sufficient to form a belief as to the allegations contained in paragraph 26 of the Petition and therefore denies same.

27. Registrant is without information sufficient to form a belief as to the allegations contained in paragraph 27 of the Petition and therefore denies same. Registrant denies that the attachments to the Petition have any evidentiary value or legal significance.

28. Registrant is without information sufficient to form a belief as to the allegations contained in paragraph 28 of the Petition and therefore denies same. Registrant denies that the attachments to the Petition have any evidentiary value, legal significance or precedential effect.

29. Registrant is without information sufficient to form a belief as to the allegations contained in paragraph 29 of the Petition and therefore denies same. Registrant denies that the attachments to the Petition have any evidentiary value or legal significance.

30. Registrant is without information sufficient to form a belief as to the allegations contained in paragraph 30 of the Petition and therefore denies same. Registrant denies that the attachments to the Petition have any evidentiary value or legal significance.

31. Registrant incorporates by reference all prior allegations as are set forth above.

32. Registrant denies the allegations contained in paragraph 32 of the Petition.

33. Registrant denies the allegations contained in paragraph 33 of the Petition.
34. Registrant denies the allegations contained in paragraph 34 of the Petition.
35. Registrant denies the allegations contained in paragraph 35 of the Petition.
36. Registrant denies the allegations contained in paragraph 36 of the Petition.

Registrant denies the prayer and further denies Petitioner's request that registration of the subject mark registered under U.S. Trademark Certificate of Registration No. 3,527,661 be cancelled.

Registrant further asserts the following affirmative defenses, in the alternative:

AFFIRMATIVE DEFENSES

I. Predicate facts supporting Registrant's Affirmative Defenses

A. Inconsistent Allegations relating to Petitioner's Alleged Rights and Registration

As the Board has acknowledged, there are numerous errors and inconsistencies in the record with respect to the Petitioner's alleged formation, organization; entity status; its address of record; which directly relate to the essential allegations and matters of proof relating to the Petitioner's alleged use and registration of the mark shown in the '728 Registration, including:

(i) that the ESTTA cover sheet accompanying the petition for cancellation identifies Petitioner as ROAD TOOLS INC. whereas the petition itself identifies petitioner as ROAD TOOLS LLC;

(ii) that in the petition, Petitioner alleged itself to be an entity organized under the laws of New Hampshire, in contrast to the record in pleaded Registration No. 2563728 which identifies the owner thereof as a Massachusetts limited liability company;

(iii) that the record address for the owner of the pleaded registration appears to be located in the State of New Mexico, while Petitioner claims in its petition an address of 15 Frontier Street, Rye, New Hampshire, 03870;

(iv) that the entity known as “Road Tools LLC” a Domestic Limited Liability Company organized under the laws of the Commonwealth of Massachusetts, was involuntarily dissolved by Court Order and by the Massachusetts Secretary of the Commonwealth, Corporations Division on April 30, 2009, that the records of the Massachusetts Secretary of the Commonwealth reflected such involuntary dissolution and that the Petitioner was not reinstated until after the filing of the Petition for cancellation herein;

B. Registrant’s Rights in the COOLPAD Mark

(i) Registrant is the owner of the trademark **COOLPAD 酷派**, as was registered in P.R. China under Registration No. 3651568, on March 07, 2005, in connection with “computers, cameras (photography), word processors, computer software (recorded), processors (central processing units), electronic pocket translators, radiotelephony sets, BP call, video telephones, acoustic set.”

(ii) Registrant is the owner of the trademark **COOLPAD 酷派**, registered Internationally with the World Intellectual Property Organization, under Registration No. 910196, registered July 14, 2006, with designations in various countries worldwide, in conformance with the Madrid Protocol and/or Madrid Agreement.

(iii) Registrant is the owner of the trademark **COOLPAD 酷派**, including in the United States as evidenced by United States Trademark Registration Certificate No. 3,527,661 which published for Opposition on August 19, 2008, under application Serial No. 79/033536, and which was duly registered by the USPTO on November 04, 2008 in connection with “photography cameras; computer software use in database management; electronic pocket translators; radiotelephony set comprise of transmitters and receivers; video telephones; acoustics sets, namely, apparatus for wireless transmission of acoustic information” in International Class 009.

C. Procedural Facts

On November 4, 2010, Petitioner filed this proceeding seeking the cancellation of the Registrant's Registration. Prior to the filing of this proceeding Petitioner had never contacted the Registrant, and Registrant was not aware of any issues or conflicts as existing between the parties.

II. AFFIRMATIVE DEFENSES

1. In light of the numerous errors and inconsistencies in the record with respect to the Petitioner's alleged formation, organization; entity status; its address of record; and other salient facts which directly relate to the essential allegations and matters of proof, as are required to be proven by the Petitioner herein, the Registrant is informed and believes and on such basis alleges that the Petitioner is not the proper registrant of the '728 Registration; that such Registration is void ab initio, or is otherwise invalid because the facts supporting such registration were incorrectly stated in the record, that the Petitioner has not itself continuously used the mark shown in such registration in commerce, and/or that the Petitioner has engaged in naked licensing with respect to such mark and/or registration.

2. In light of the facts herein alleged including that that Registrant had acquired international rights with respect to its mark; that such **COOLPAD 酷派** mark was published for Opposition in the United States under application Serial No. 79/033536 on August 19, 2008; that no opposition against such mark was filed by anyone, including Road Tools, LLC; that Registration No.: 3,527,661 for such mark issued on November 04, 2008; that two years later, on November 4, 2010, Petitioner filed this proceeding seeking cancellation of the Registrant's mark without ever having contacted the Registrant, and at a time when Registrant was not aware of any issues or conflicts as existing between the parties; but rather to the contrary, (due to the Petitioner's failure to record or maintain its name, state of organization, entity status, or address

with the USPTO, and further due to the fact that the Petitioner had failed to file any annual statements or other required documents, and therefore that it allowed itself to become involuntarily dissolved by Court Order in the Commonwealth of Massachusetts in April 2009, and further that according to the records of the Commonwealth of Massachusetts, that Registrant had been led to believe that the Petitioner had ceased doing business and had abandoned any use of the alleged mark shown in the '728 Registration. Moreover, that Petitioner was not reinstated until after the instant proceeding was initiated. Therefore, due to Petitioner's unreasonable delay with regard to its failure to complain of, oppose or otherwise challenge the subject Registration No. 3,527,661, which was published for opposition on August 19, 2008, until November 4, 2010, during which time Registration No.: 3,527,661 subsisted on the Principal Register all the while without any instances of any actual confusion and no correspondence, threat, or inquiry had ever been exchanged between these parties; all the while, during which time Registrant used and invested in its mark internationally and made significant efforts, including substantial investments of time and money using and developing the market for its own expensive, high-tech and heavily regulated telecommunications devices marketed under its Registered COOLPAD (and design) trademark in the United States. As a result of the Petitioner's unreasonable delay, failure to object, oppose or seek to cancel the subject Registration under such circumstances, and the material prejudice to the Registrant due solely as the result of Petitioner's failure to timely oppose or otherwise challenge the subject registration and its further and repeated failures to properly record, reflect or maintain any proper (or consistent) entity status, place of business or other required indicia of identification, or existence, Petitioner's claims are barred by the doctrine of laches and its should be legally estopped from seeking cancellation of the subject Registration.

3. Registrant is informed and believes that there is no reasonable basis for the

Petitioner's allegations, that there is no likelihood of confusion, and that the Petitioner has no evidence supporting any of its claims. To the contrary, it would appear that the Petitioner's only interest and intent in this proceeding is to attempt to extort a licensing fee from the Registrant, or to otherwise seek to bar the Registrant's non-competitive and non-conflicting business.

Moreover, in light of the facts alleged above, Registrant maintains that the Petitioner has no validly registered ownership interest in, nor any legitimate, continuous and non-abandoned common law use rights with respect to the mark shown in the '728 registration. For such reason, Petitioner's claims are barred by the doctrine of unclean hands.

AMPLIFICATIONS TO DENIALS RAISED HEREIN

There is no likelihood of confusion, mistake or deception because, inter alia, the Registrant's mark and the pleaded mark of the Petitioner are not confusingly similar. Registrant's mark in its entirety is sufficiently distinctively different from Petitioner's alleged marks to avoid confusion, deception or mistake as to the source or sponsorship or association of Registrant's goods. Registrant's use of its mark will not mistakenly be thought by the public to derive from the same source as the Petitioner's alleged goods, nor will such use be thought by the public to be a use by Petitioner or with Petitioner's authorization or approval. Moreover, Registrant's mark, when used on Registrant's goods, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Registrant with Petitioner, or as to the origin, sponsorship or approval of Registrant's goods by Petitioner. The Petitioner's goods specified in its alleged Trademark Registration, namely "computer stands specifically designed for holding a computer" are highly dissimilar in nature as compared to Registrant's goods covered by the Subject '661 Registration.

There are a myriad of adoptions and uses of the terms COOL and PAD in

the field of computer stands and computer accessories which themselves are highly diluted as a trademark formative. Both terms COOL and PAD have been previously adopted and are contemporaneously used widely within several industries, particularly including goods related to “computer stands specifically designed for holding a computer,” as to other computer-related goods in International Class 009 of the Registrant and Petitioner as well as a variety of non-competing uses. As a result, any claims by the Petitioner to the alleged mark (in part or in full) are hence weak. As such, there cannot exist any likelihood of confusion between the Petitioner’s alleged marks and the Registrant’s mark.

Registrant further alleges that unlike most consumer goods, both the Registrant’s goods and the Petitioner’s alleged goods are typically purchased by sophisticated purchasers seeking high-tech electronic apparatuses with particular size, computing and communications specifications. Inasmuch as such conditions exist under which the prospective buyers to whom the respective parties’ sales are made occur only after significant communications and evaluation, there is not even a remote possibility of confusion herein.

Until Petitioner had filed this action, the Subject Registration existed on the Principal Register without any issues, conflicts or correspondence between the parties and has and does continue to exist without any actual or likely confusion as between the Petitioner and Registrant by anyone.

In view of the foregoing, Registrant contends that: the Petitioner’s claims are groundless and baseless in fact; that the Petitioner’s claims in its Petition are false and inconsistent; that the Petitioner has not shown wherein it will be, or is likely to be, damaged by the continued registration of Registrant's existing trademark; that Registrant's trademark is manifestly distinct from any alleged mark of the Petitioner or any designation of the Petitioner and Registrant prays that the Petitioner’s claims be dismissed as to the subject Registration.

Respectfully submitted,

ANDERSON & ASSOCIATES

Dated: June 24, 2011

by: /StephenLAnderson/
Stephen L. Anderson
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Certificate of Service

I hereby certify that on the date set forth below, a true copy of the foregoing
**REGISTRANT'S FIRST AMENDED ANSWER TO PETITION TO CANCEL
REGISTRATION**

was mailed first-class mail, postage prepaid, to
JEFFREY H. GREGER
LOWE HAUPTMAN HAM & BERNER LLP
1700 DIAGONAL ROAD, SUITE 310
ALEXANDRIA, VA 22314

Dated: June 24, 2011

/StephenLAnderson/
Stephen L. Anderson